

June 4, 2009

**OFFICE OF THE HEARING EXAMINER  
CITY OF RENTON**

**REPORT AND RECOMMENDATION**

APPLICANT: Conner Homes at Barbee Mill LLC  
Attn: Gary Upper  
846 108<sup>th</sup> Avenue NE  
Bellevue, WA 98004, and

Dr. Paul Joos  
4057 Williams Avenue N  
Renton, WA 98056

CONTACT: David Douglas  
Waterfront Construction, Inc.  
10315 19<sup>th</sup> Avenue SE, Ste. 106  
Everett, WA 98208

LUA-09-045, SM, SMC, ECF

LOCATION: 4057 & 4063 Williams Avenue N

SUMMARY OF REQUEST: Shoreline Conditional Use Permit and a Shoreline Substantial Development Permit for the construction of a 76-foot long joint use dock with four mooring pilings in association with two attached residential units on the shore of Lake Washington.

SUMMARY OF ACTION: Development Services Recommendation: Approve

DEVELOPMENT SERVICES REPORT: The Development Services Report was received by the Examiner on May 19, 2009.

PUBLIC HEARING: After reviewing the Development Services Report, examining available information on file with the application, field checking the property and surrounding area; the Examiner conducted a public hearing on the subject as follows:

**MINUTES**

*The following minutes are a summary of the May 26, 2009 hearing.  
The legal record is recorded on CD.*

The hearing opened on Tuesday, May 26, 2009, at 9:01 a.m. in the Council Chambers on the seventh floor of the Renton City Hall. Parties wishing to testify were affirmed by the Examiner.

The following exhibits were entered into the record:

<b><u>Exhibit No. 1:</u></b> Yellow file containing the original application, proof of posting, proof of publication and other documentation pertinent to this request.	<b><u>Exhibit No. 2:</u></b> Neighborhood Detail Map
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<b><u>Exhibit No. 3:</u></b> Vicinity Map and Area Map	<b><u>Exhibit No. 4:</u></b> Plot Plan
<b><u>Exhibit No. 5:</u></b> Proposed Pier Elevation View	<b><u>Exhibit No. 6:</u></b> Planting Plan
<b><u>Exhibit No. 7:</u></b> Zoning Map	<b><u>Exhibit No. 8:</u></b> ERC Determination
<b><u>Exhibit No. 9:</u></b> ERC Mitigation Measures	<b><u>Exhibit No. 10:</u></b> Shoreline Substantial Development Permit

The hearing opened with a presentation of the staff report by Gerald Wasser, Associate Planner, Community and Economic Development, City of Renton, 1055 S Grady Way, Renton, Washington 98055. The project does require a Shoreline Substantial Development Permit. It is a proposal for a joint use dock that straddles a side yard property line between 4057 and 4063 Williams Avenue N in the Barbee Mill Plat.

The proposed new dock would be approximately 76 feet long by 5 feet 10.5 inches wide. It would be a fully grated metal dock that would be supported by six eight inch diameter steel piles. The mooring pilings are 10-inch in diameter and are also steel. All piles would be installed with a vibratory pile driver. The mooring pilings would be located 16 feet from the dock. Mooring pilings have been considered a safe mooring device, they keep watercraft from moving and banging against the dock itself.

The Environmental Review Committee issues a Determination of Non-Significance – Mitigated with three measures. No appeals were filed.

The fully grated pier would have a metal ramp and dock area. There will be six low-voltage lights on the dock. The pier's grating would allow light to pass through to habitat below. Additional upland vegetation plantings would be installed by the applicant to offset any impacts that would result from the dock and mooring pilings.

This project does meet all the requirements of the Shoreline Conditional Use criteria.

This will most likely be one of seven joint use dock proposals, which will encompass 14 lots in the Barbee Mill plat. A Shoreline Substantial Development permit exists for a community dock north of this proposal that was approved, however the applicant is now in negotiations with the State Department of Natural Resources to allow that dock to proceed. This dock would be in the DNR area and they are concerned with the use and effects of the shoreline in that area.

Gary Upper, Conner Homes at Barbee Mill LLC, 846 108<sup>th</sup> Avenue NE, Bellevue 98004 stated that the mooring pilings were requested by Dr. Joos after he purchased his home. The purpose for them is to be able to provide a four-point tie off opportunity for larger craft so they don't bang against the dock in the wind. This area is quite exposed with lots of windy days.

One of the conditions of the purchase was that if docks were requested they should be joint use docks and only one point of access to the dock be provided for the pair of homes.

After the property was purchased it was discovered that the north half of the property, which is 14 of the 28 lots, after having the existing docks removed and shoreline rehabilitation completed by the prior owner, the Department of Natural Resources withdrew the opportunity to have private docks in that area. It was originally anticipated that all 28 homes could apply for a dock, now only the southern half of the homes can do so, which limits the total to 7 docks that can be applied for.

There are covenants that will govern the shared docks and the responsibilities of each owner.

Charles Conner, 3001 Mountain View Avenue N, Renton stated that there are a number of docks in his community off of Mountain View Avenue that have the mooring pilings instead of the finger piers. None of them are lit, some of the docks do have lighting, but because they are even with the end of the dock or slightly inboard, they do not present a hazard. There is a speed limit of 8 knots within 300 feet of the end of the dock.

Kayren Kittrick, Community and Economic Development stated that the Metro line is nowhere near this project. There are no facilities in the lake at this point. Reflective strips might work on those mooring pilings.

Mr. Wasser stated that construction would take place from a construction barge, all construction will take approximately 5-10 days with the pile driver being in use 3-4 of those days.

The **Examiner** called for further testimony regarding this project. There was no one else wishing to speak, and no further comments from staff. The hearing closed at 9:34 a.m.

## **FINDINGS, CONCLUSIONS & RECOMMENDATION**

Having reviewed the record in this matter, the Examiner now makes and enters the following:

### **FINDINGS:**

1. The applicants, Conner Homes and Dr. Paul Joos, filed a request for a Shoreline Conditional Use Permit as well as a Shoreline Substantial Development Permit to install mooring pilings as well as an associated dock in Lake Washington.
2. The yellow file containing the staff report, the State Environmental Policy Act (SEPA) documentation and other pertinent materials was entered into the record as Exhibit #1.
3. The Environmental Review Committee (ERC), the City's responsible official issued a Determination of Non-Significance- Mitigated (DNS-M).
4. The subject proposal was reviewed by all departments with an interest in the matter.
5. There was no opposition from the public regarding the subject proposal.
6. The subject site is located at 4057 and 4063 Williams Avenue North. The subject site consists of two side-by-side lots. The subject site is located west of Lake Washington Boulevard on the shoreline of Lake Washington.
7. The map element of the Comprehensive Plan designates the area in which the subject site is located as suitable for the development of commercial office or residential uses, but does not mandate such development without consideration of other policies of the Plan.
8. The subject site is currently zoned COR (Commercial, Office, Residential). The site is developed with a variety of residential uses including townhomes and single family homes.

9. The subject site was annexed to the City with the adoption of Ordinance 1800 enacted in October 1959.
10. The two lots are approximately 11,760 square feet but a portion of the property extends out into the lake.
11. Duplex residential townhomes are located on the eastern, uplands portion of the site.
12. The applicants propose erecting a joint use pier and four mooring pilings in the lake. The pier which is a permitted use for residential uses under the Shoreline Master Program will straddle the lot line as it extends out into the lake. The Shoreline Master Program does not identify mooring pilings in its text as a permitted use and, therefore, it must be reviewed under the Shoreline Conditional Use provisions.
13. The pier or dock will be 76 feet long. The 36 feet nearest the shore will be 3 feet 9 inches wide. The remaining 40 feet will be 5 feet 10.5 inches wide. The entire surface will be grated to allow light to penetrate under the dock to avoid shadows that allow salmon predators to hide. Again, this portion of the proposal does not need a special permit.
14. The applicant proposes four (4) mooring pilings. There will be two north of the dock and two south of the dock. These pilings are intended to tie-off boats slightly away from the dock to avoid having boats banging into the dock. These pilings would be 10 inches in diameter and extend to approximately 6 feet above the Ordinary High Water Line. The pilings would be 16 feet respectively from the north and south edges of the dock. As noted above, mooring pilings are not identified in the text of the Master Program which therefore requires review under the Conditional Use provisions of City and State law.
15. All construction would be accomplished from the lake by barge. The work is expected to take approximately 5 to 7 days. The work would be accomplished with a vibratory pile driver.
16. Code requires a five foot side yard setback from the property line. The proposal meets this requirement.
17. The work will be done in the time window specified by the state to avoid interfering with salmon activity in the lake. A silt fence will be installed around the work area.
18. The development of the uplands resulted in the planting of native vegetation on the shoreline. The applicant will supplement these planting with additional plantings in association with dock construction.
19. Lake Washington's shoreline is classified as a Shoreline of Statewide Significance and therefore any development adjacent to it is subject to the City's Shoreline Master Program. This section of the shoreline is designated as an Urban Shoreline.
20. While it appears that this is the first application to install mooring pilings, mooring pilings apparently are found on other properties in Renton and other jurisdictions have specific regulations allowing them.

#### **CONCLUSIONS:**

1. The criteria for approving a Shoreline Conditional Use permit are twofold. There are City criteria and those City criteria require compliance with additional State criteria. Those criteria are as follows:

Renton: Section 4-9-190.I.5:

5. Conditional Use:

- a. Purpose: Upon proper application, a conditional use permit may be granted. The objective of a conditional use provision is to provide more control and flexibility for implementing the regulations of the Master Program. With provisions to control undesirable effects, the scope of uses can be expanded to include many uses.
- b. Decision Criteria: Uses classified as conditional uses can be permitted only after consideration and by meeting such performance standards that make the use compatible with other permitted uses within that area. A conditional use permit will be granted subject to each of the following conditions:
  - i. The use must be compatible with other permitted uses within that area.
  - ii. The use will not interfere with the public use of public shorelines.
  - iii. Design of the site will be compatible with the surroundings and the City's Master Program.
  - iv. The use shall be in harmony with the general purpose and intent of the City's Master Program.
  - v. The use meets the conditional use criteria in WAC 173-27-160.

Washington State: WAC 173-27-160:

Review criteria for conditional use permits. The purpose of a conditional use permit is to provide a system within the master program which allows flexibility in the application of use regulations in a manner consistent with the policies of RCW 90.58.020. In authorizing a conditional use, special conditions may be attached to the permit by local government or the department to prevent undesirable effects of the proposed use and/or to assure consistency of the project with the act and the local master program.

(1) Uses which are classified or set forth in the applicable master program as conditional uses may be authorized provided that the applicant demonstrates all of the following:

- (a) That the proposed use is consistent with the policies of RCW 90.58.020 and the master program;
- (b) That the proposed use will not interfere with the normal public use of public shorelines;
- (c) That the proposed use of the site and design of the project is compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and shoreline master program;
- (d) That the proposed use will cause no significant adverse effects to the shoreline environment in which it is to be located; and
- (e) That the public interest suffers no substantial detrimental effect.

(2) In the granting of all conditional use permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if conditional use permits were granted for other developments in the area where similar circumstances exist, the total of the conditional uses shall also remain consistent with the policies of RCW 90.58.020 and shall not produce substantial adverse effects to the shoreline environment.

(3) Other uses which are not classified or set forth in the applicable master program may be authorized as conditional uses provided the applicant can demonstrate consistency with the requirements of this section and the requirements for conditional uses contained in the master program.

(4) Uses which are specifically prohibited by the master program may not be authorized pursuant to either subsection (1) or (2) of this section.

2. The area is zoned for a variety of uses including residential uses. It was platted and developed for residential uses. Many residential properties along Renton's Lake Washington shoreline are served by docks and piers. There was testimony while this may be the first application under the Shoreline Program for mooring pilings, there are some already serving docks in Renton. The pilings are proposed for the private areas of lake bottom and the adjacent uplands although they are located in the lake. They should be non-intrusive visually, extending approximately 6 feet above the Ordinary High Water Mark and only 10 inches in diameter. They will be located closer to the shoreline than the end of the docks so they should not present an unusual obstacle to navigation.
3. The proposed pilings should not interfere with public use of the shoreline, particularly since this is a private shoreline. The dock and pilings will extend out into the lake and therefore, an additional piling should not hamper near-shore navigation. This shoreline is privately owned and developed with duplex housing.
4. The pilings will be setback from property lines more than required by code and will not create any untoward impacts on adjacent uses or on water-oriented uses. The fact that the dock will be shared reduces the number of projections out into the lake so the additional pilings will be less intrusive than a second dock.
5. The next series of criteria are contained within the Washington Administrative Code. One of the paramount goals is to protect the ecology of the shoreline. The applicant proposes additional plantings in conjunction with installing the dock. The pilings will be out in the lake and not affect the actual shoreline, although the dock and pilings will obviously permit and encourage boating on the lake.
6. The lots, as noted, are private and extend out into the lake. The proposed pilings will serve their respective lots. Private uses are permitted in this area of the shoreline. The use is similar to those uses permitted in an urban shoreline. The use should not impair the public use of this section of the lakeshore or the water in its vicinity.
7. The pier and pilings should not interfere with any uses that might occur in this area of the lake. The comprehensive plan designates this area as suitable for residential uses and the usual complement of accessory uses. On a lakeshore property, piers, docks and similar uses including the proposed pilings would be considered reasonable accessory uses.
8. The proposed pilings should not create any significant adverse affects on the shoreline environment.
9. The pier and pilings should not further harm the public interest.

10. As noted in earlier decisions, the analysis of cumulative impact or impacts is hard to judge. While this appears to be the first formal request for mooring pilings it appears that others already exist in Renton and surrounding shoreline areas. The pilings will be located shoreward of the pier's end. Any number of docks already protrude out into the lake from many of the homes along the shore. Clearly, there have had to be impacts to water quality and habitat as a result of motor boating and docks shading the lake and some of the shallow areas. This additional action will probably not have much of a significant effect on the lake or shore.
11. Since pilings are neither permitted nor prohibited outright, they do require review under the Conditional Use criteria. The proposed use is generally consistent with the criteria noted above.
12. Ownership, access and maintenance agreements for this shared use should be executed.

**RECOMMENDATION:**

The Conditional Use Permit and the Shoreline Substantial Development Permit for the pier and mooring pilings should be approved subject to the following conditions:

1. The applicant shall comply with the mitigation measures imposed by the Environmental Review Committee in its Determination of Non-Significance – Mitigated issued on April 27, 2009.
2. The applicant shall prepare a restrictive covenant with the appropriate signatures of the property owners and recorded with the King County Assessor's Office. The document shall specify ownership rights and maintenance provisions for the dock and mooring pilings. The restrictive covenant shall contain a statement that the covenant shall remain with the property and can only be released by written permission granted by the City of Renton. A copy shall be provided to the Planning Division Project Manager prior to recording with King County. Building permits may be issued only subsequent to recording the restrictive covenant.
3. The applicant shall comply with all construction conditions by the State agencies and all construction conditions provided in the application submitted to the City.

ORDERED THIS 4<sup>th</sup> day of June 2009.

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FRED J. KAUFMAN  
HEARING EXAMINER

TRANSMITTED THIS 4<sup>th</sup> day of June 2009 to the following:

Mayor Denis Law	Dave Pargas, Fire
Jay Covington, Chief Administrative Officer	Larry Meckling, Building Official
Julia Medzegian, Council Liaison	Planning Commission
Marty Wine, Assistant CAO	Transportation Division
Gregg Zimmerman, PBPW Administrator	Utilities Division
Alex Pietsch, Economic Development	Neil Watts, Development Services
Jennifer Henning, Development Services	Janet Conklin, Development Services
Stacy Tucker, Development Services	Renton Reporter

Pursuant to Title IV, Chapter 8, Section 100 of the City's Code, **request for reconsideration must be filed in writing on or before 5:00 p.m., June 18, 2009** Any aggrieved person feeling that the decision of the Examiner is ambiguous or based on erroneous procedure, errors of law or fact, error in judgment, or the discovery of new evidence which could not be reasonably available at the prior hearing may make a written request for a review by the Examiner within fourteen (14) days from the date of the Examiner's decision. This request shall set forth the specific ambiguities or errors discovered by such appellant, and the Examiner may, after review of the record, take further action as he deems proper.

An appeal to the City Council is governed by Title IV, Chapter 8, Section 110, which requires that such appeal be filed with the City Clerk, accompanying a filing fee of \$75.00 and meeting other specified requirements. Copies of this ordinance are available for inspection or purchase in the Finance Department, first floor of City Hall. **An appeal must be filed in writing on or before 5:00 p.m., June 18, 2009.**

**If the Examiner's Recommendation or Decision contains the requirement for Restrictive Covenants, the executed Covenants will be required prior to approval by City Council or final processing of the file. You may contact this office for information on formatting covenants.**

The Appearance of Fairness Doctrine provides that no ex parte (private one-on-one) communications may occur concerning pending land use decisions. This means that parties to a land use decision may not communicate in private with any decision-maker concerning the proposal. Decision-makers in the land use process include both the Hearing Examiner and members of the City Council.

All communications concerning the proposal must be made in public. This public communication permits all interested parties to know the contents of the communication and would allow them to openly rebut the evidence. Any violation of this doctrine would result in the invalidation of the request by the Court.

The Doctrine applies not only to the initial public hearing but to all Requests for Reconsideration as well as Appeals to the City Council.